

UNITED STATES DISTRICT COURT

for the
Northern District of New York

United States of America

v.

CHARLES BAYER, JR.

Defendant

Case No. 13-MJ-87 (DEP)

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
MAR 1 2013
AT O'CLOCK
Lawrence K. Baerman, Clerk - Syracuse

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

From 2011, the exact date unknown, until the present

On or about the date of _____ in the county of Oneida in the Northern District of

New York, the defendant violated Title 18 U. S. C. § 371

, an offense described as follows:

Conspiracy to (1) defraud the United States or an agency thereof, specifically the EPA, by impeding and impairing the governmental functions and; (2) to violate the Clean Air Act, Title 42 U.S.C. Sections 7413(c)(2)(A) and 7413(c)(2)(C).

This criminal complaint is based on these facts:

☒ Continued on the attached sheet.

 Complainant's signature

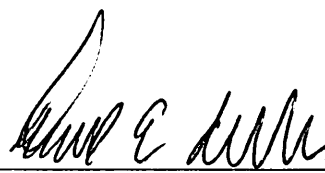
Renee A. Stewart, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 03/01/2013

City and state: Syracuse, NY



Judge's signature

Hon. David E. Peebles, U.S. Magistrate Judge

Printed name and title

5. I make this affidavit in support of a criminal complaint charging Charles Bayer Jr. with violations of Title 18, U.S.C. Section 371, conspiracy to defraud the United States or an agency thereof, specifically the EPA, by impeding and impairing the governmental functions of the EPA, in enforcing federal environmental, safety, and health regulations throughout the United

States; specifically alleged violations of the CAA, Title 42 U.S.C. Sections 7413(c)(2)(A) and 7413(c)(2)(C).

Statutory Background

6. The Clean Air Act is a federal law that authorizes the EPA to establish National Ambient Air Quality Standards (NAAQS) to protect the public health and public welfare, and to regulate emissions of hazardous air pollutants. The Act requires mandatory motor vehicle emissions inspection programs in those areas of the country found in noncompliance (or “nonattainment”) with the applicable NAAQS for ozone.

7. Programs requiring these mandatory inspections are commonly referred to as Inspection and Maintenance (I/M) programs. Based on ambient air monitoring, portions of New York State have been designated as in nonattainment with the federal ozone NAAQS. The Act also defined the Ozone Transportation Region (OTR), which includes New York State. Additional I/M requirements apply to the OTR, which apply to New York’s “Upstate I/M Area,” including Oneida County.

8. The elements of New York’s I/M programs, were detailed to the EPA through State Implementation Plans (SIPs) revisions submitted in 1998, 2006, and 2009. These SIP revisions have been approved by the EPA. Mandatory motor vehicle emission inspections are required by New York State’s Vehicle and Traffic Law and Environmental Conservation Law.

9. The New York Vehicle Inspection Program (NY VIP) is jointly administered by the NYS DEC and NYS DMV, which requires annual onboard diagnostic (OBDII) inspections for most Model Year 1996 and newer vehicles. The NYS DMV licenses inspection stations and inspectors, and all NY VIP emissions inspections must be completed using NYS DEC/NYS DMV approved equipment. The individuals involved conspired to violate the CAA, in using the device in order to circumvent the emission standard testing requirements of the CAA.

10. Title 42 of U.S.C., Sections 7413(c) (2)

Any person who knowingly –

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed

under this chapter shall, upon conviction, be punished by a fine pursuant to Title 18, or by imprisonment for not more than 2 years, or both.

[shall be guilty of a crime].

11. Under Title 42 of U.S.C. Section 7525, deals with motor vehicle and motor vehicle engine compliance testing and certification. The Act requires the EPA Administrator to prescribe vehicle emission standards for new vehicles “applicable to such vehicles and their engines for their useful life[,]” and to revise the regulations to add test procedures for vehicles. See 42 U.S.C. Section 7521(a)(1). The Act also requires the Administrator to “test, or require to be tested,” motor vehicles to determine whether they conform to the standards prescribed in Section 7525(a). Title 42, U.S.C. Section 7521(m)(3), provides that the Administrator is given the authority to require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans to provide for inspection of onboard diagnostic systems and for the maintenance or repair of malfunctions or system deterioration identified by, or affecting, such diagnostic systems.

12. Title 42 U.S.C. Section 7511a(b)(4), in sum and substance and in pertinent part, requires motor vehicle emissions testing programs, or I/M programs, in those areas of the nation most impacted by carbon monoxide and ozone pollution. Most of New York State is designated as nonattainment for ozone. See 40 C.F.R., Section 81.333.

13. A motor vehicle simulator is an electronic device that generates fraudulent results for vehicles that are supposed to undergo a legitimate OBDII inspection. The simulator device allows a vehicle to obtain a passing inspection certificate without actually completing the required NYS DMV/NYS DEC emissions testing protocols.

14. Title 18, U.S.C. 371, Conspiracy to commit offense or to defraud the United States, specifically states that a conspiracy is defined as two or more persons conspiring either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect to object of the conspiracy. The individuals involved conspired to violate the CAA, in using the device in order to circumvent the emission standard testing requirements of the CAA.

The Investigation to Date

15. Your Affiant, along with EPA-CID Special Agent (SA) Daniel Lau, and NYS DEC Investigator Dave Clarke, have been conducting an investigation into allegations of the sale and unlawful use of motor vehicle simulators, also known as onboard diagnostic OBD simulators, by various individuals to by-pass NY state vehicles emissions inspection regulations which were adopted by the NYS DEC and approved by the EPA in order to protect air quality standards.

16. On January 22, 2013, an individual, (hereinafter referred to as Source1), was interviewed by your Affiant and SA Lau. Source1 admitted to buying and selling numerous simulator devices from approximately 2009 through 2012, used specifically for the purpose of bypassing emission testing and regulations. Source1 identified one of his suppliers of the simulator devices as an individual identified as "Chuck," (email address of cb.ventures@yahoo.com), whom Source1 bought these devices from during 2011 and 2012.

17. On February 5, 2013, SA Lau participated in a telephone call with Source1 who provided additional information regarding "Chuck." Source1 stated that over the time frame of on or about July 2011, through on or about February 2012, Source1 purchased approximately 10 to 20 simulator devices, (specifically XtremeOBDII simulator units) from "Chuck" (email address of cb.ventures@yahoo.com). Source1 recalled a return address on the packaging mailed to Source1 from the purchase of an XtremeOBDII simulator was from Louisiana. Specifically, Source1 stated he purchased one of the simulator devices from "Chuck" on or about November 2011, which was ultimately sold to an individual (hereinafter referred to as Source2) in Utica, NY. DEC Investigator David Clark has verified that this specific device was used to perform approximately 37 illegal inspections (in other words used to bypass air emission testing and regulations) in and around Oneida county, NY. Source1 provided Fed-Ex tracking number #898737039821 regarding this simulator device shipped to Source1 from "Chuck," that shows the shipping date of November 22, 2011. Your Affiant has reviewed an e-mail from cb.ventures@yahoo.com dated November 23, 2011, whereby this Fed-Ex tracking number is provided to Source1.

18. On October 31, 2012, and again on November 13, 2012, SA Lau spoke with Source2, who verified receiving an XtremeOBDII simulator device from Source1 in November 2011. SA Lau and your Affiant have reviewed PayPal records that show payments from Source1 to "Chuck," which indicates the name Charles Bayer (initial supplier). The records show payments made through PayPal, from Source1 to Bayer dated November 19, 2011, and November 23, 2011. SA Lau and your Affiant verified with Source1 that any payments made to Bayer were for the purchase of simulator devices.

19. On February 6, 2013, your Affiant contacted Fed-Ex and spoke with a Fed-Ex Representative regarding Fed-Ex tracking #325146315000048 (a shipment of a vehicle simulator device received by and identified from Source1) to verify the shipper from Lafayette, Louisiana. The Fed-Ex representative provided your Affiant with the shipper account information as Charles Bayer, 202 Cheshire Circle, Lafayette, Louisiana 70506 (who Source1 refers to as "Chuck."). This shipment was shipped from Charles Bayer on February 27, 2012.

20. Your Affiant has reviewed numerous documents provided by Fed-Ex pursuant to a Grand Jury Subpoena that provide tracking information related to the aforementioned Fed-Ex shipments from Charles Bayer to Source1. These shipments have been verified by Source1 to be shipments of simulator devices that Source1 sold to other customers for the purpose of bypassing air-emission testing and regulations. Your Affiant has reviewed an additional Fed-Ex tracking/shipping #793219593711, bearing the shipment date of February 11, 2012, under

Charles Bayer's Fed-Ex Account number (137916690). Source1 has verified that this shipment of a simulator device was arranged by Source1, in that Source1 asked "Chuck" (Charles Bayer) to specifically ship a simulator device directly to Source1's customer in Tucson, Arizona.

21. Your Affiant has reviewed numerous e-mail communications provided from Source1 regarding the purchase of multiple simulator devices from Charles Bayer, using the e-mail address of cb.ventures@yahoo.com. Excerpts from these e-mail communications are noted below as follows:

July 22, 2011, at 1:24 p.m. from Source1 to cb.ventures@yahoo.com: "Hey Darren gave me your contact info, I need a set of 3 extreme obd." Response from cb.ventures@yahoo.com, July 22, 2011, at 1:35 p.m. to Source1: "Hello. That sounds good. I build them as the orders come in. You are wanting three. Once payment is received. I will build them and send them out. If payment is received today. They will ship out no later then Tuesday. The price is \$325.00 per unit Shipped in continental u.s. Payments accepted via paypal cb.ventures@yahoo.com Thank you."

September 1, 2011, at 6:47 p.m. from Source1 to cb.ventures@yahoo.com: "I bought this from Darren before and with the scan tools i was using, the VIN feature did work, Darren told me you have a problem with a customer where the VIN did not show with this scan tool is this the VIN issue your having troubles with? can i use the old software Darren used with the xtreme units?" Reply from cb.ventures@yahoo.com, September 1, 2011, wrote: "In theory it should work with the older units. I can't guarantee or support units Darren sold. I have new unit and updated software that currently does support vin on the scan tool I have." Source1 reply, September 1, 2011, at 8:51 p.m. wrote: Can you sent me the software so I can look thru it?" Reply from cb.ventures@yahoo.com: "Are you interested in purchasing new units?" Reply from Source1, on September 4, 2011, at 7:01 p.m. wrote: "I want one so I can test it out and at least see what I'm going to be selling how much is one united shipped to ny." Response from cb.ventures@yahoo.com, September 5, 2011, 7:33 p.m. wrote: Price is \$350.00. Shipped. I have 4 available for immediate sale." Reply from Source1 on September 8, 2011, wrote: "money sent." Reply from cb.ventures@yahoo.com: "Thank you I will process order and send tracking when available." Reply from Source1 on September 8, 2011, at 3:58 p.m., wrote: "How much for a 2nd unit?" Response from cb.ventures@yahoo.com on September 8, 2011, at 6:35 p.m. wrote: "\$350.00 shipped." Response on September 11, 2011, at 4:19 p.m. from Source1 to cb.ventures@yahoo.com, wrote: "did you manage to ship out the unit? if not ship it directly to my customer heres his address..."

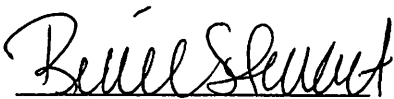
October 3, 2011, 8:18 a.m., e-mail sent from Source1 to cb.ventures@yahoo.com wrote: "i need another sim shipped to me al sent the money via paypal now let me know what the estimated delivery date is thanks." Reply from cb.ventures@yahoo.com, October 3, 2011 8:18 a.m. wrote: "I received your payment. Than kyou. I am currently sold out. I will have new units arriving oct 20th. Due to deman I am taking pre orders. If you would like to keep your payment an secure your transaction. I will keep you updated an let you know when it ships and the tracking."

November 16, 2011, at 10:14 p.m., e-mail sent from Source1 to cb.ventures@yahoo.com wrote: "i need another unit payment has been sent." Response from cb.ventures@yahoo.com, November 17, 2011, at 8:09 a.m., wrote: "Thank you. I will be receiving units nov 21st. I will ship yours our first. Thanks."

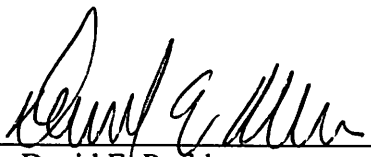
22. On February 13, 2013, your Affiant received information from the Louisiana Office of Motor Vehicles that reflected a valid Louisiana Driver's License with an expiration date of May 31, 2013, for Charles Bayer, Jr. reflecting the address of 202 Cheshire Circle, Lafayette, Louisiana 70506.

23. Wherefore, your Affiant submits that probable cause exists to arrest Charles Bayer Jr. for the violations of Title 18, U.S.C. Section 371, conspiracy to defraud the United States or an agency thereof, specifically the EPA, by impeding and impairing the governmental functions of the EPA, in enforcing federal environmental, safety, and health regulations throughout the United States; specifically alleged violations of the CAA, Title 42 U.S.C. Sections 7413(c)(2)(A) and 7413(c)(2)(C), as set forth in this affidavit.

Further affiant sayeth not.


Renee Stewart, Special Agent

Sworn before me this 1st day of March 2013.


Hon. David E. Peebles
United States Magistrate Judge